

EXHIBIT 2

Law Offices

June 29, 2015

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Universal Service Administrative Company
Rural Health Care Division
Attention: Letter of Appeal/RHC
2000 L Street NW, Suite 200
Washington, DC 20036

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WISCONSIN

RE: Denied FRN 13422321 for Apparent Competitive Bidding Violation

HCP Name	Iowa Rural Health Telecommunications Program
HCP Number	17226
Funding Request Number	13422321
Vendor	State of Iowa, Iowa Telecommunication & Technology d/b/a Iowa Communications Network (SPIN: 143003005)
Funding Year	2013
Application Type	FCC Form 462
Contact Information:	Arthur Spies Iowa Rural Health Telecommunications Program 100 East Grand Avenue Suite 100 Des Moines, IA 50309-1835 (515) 288-1955 (phone) (515) 283.9366 SPIESA@ihaonline.org

To Whom It May Concern:

The Iowa Rural Health Telecommunications Program ("IRHTP"), through its attorneys, and pursuant to sections 54.719 and 54.720 of the rules of the Federal Communications Commission ("Commission"),¹ submits this Letter of Appeal in connection with the determination of the Rural Health Care ("RHC") Division of the Universal Service Administrative Company ("USAC") relating to Funding Request Number ("FRN") 13422321 for funding year 2013. IRHTP respectfully requests review of this determination. As explained in more detail herein, the RHC Division must reverse its decision and grant the IRHTP's FRN 13422321 as well as subsequent "evergreen" circuit fee FRNs or, at the very least, hold its determinations in abeyance pending the

¹ 47 C.F.R. §§ 54.719-54.720 (2014).

IRHTP's anticipated request for review of the flawed determinations relating to FRNs 64723, 68296, 41446, and 63145 discussed in the USAC Audit No. RH2013PP018 ("USAC Audit").²

The RHC Division's determinations with regard to FRN 13422321 are set forth in two separate documents. On May 1, 2015, IRHTP was notified that the RHC Division had denied IRHTP's Form 462 FRN 1342232[1] "for all services" because of "[a]pparent service provider involvement in beneficiary's competitive bidding process."³ A few days later, on May 11, 2015, the RHC Division notified IRHTP by email that its Form 462 had been denied because of a "Possible Competitive Bidding Violation."⁴ These denial notifications were not accompanied by any findings of fact, or any information which would support a denial of universal service support funding totaling \$626,097.01 in payments due to the State of Iowa, Iowa Telecommunication & Technology d/b/a Iowa Communications Network ("ICN") on the basis of any possible competitive bidding violation.

The IRHTP did not originally seek Pilot Program funding for circuit fees, instead planning to charge circuit fees to participating health care providers.⁵ Following a Commission order allowing for additional temporary funding for continued support of broadband services for Pilot Program participants,⁶ however, the IRHTP issued the Connectivity Services RFP, to which this FRN 13422321 relates.⁷ The Connectivity Services RFP "solicit[ed] proposals from qualified fiber optic network providers to cost out the various bandwidth circuits required to connect all of the IRHTP link-segments into a fully meshed Ethernet network ranging in increments from 30 Mbs to 1 Gb/s."⁸ As set forth in the RFP and consistent with the Commission's program changes,⁹ IRHTP intended to establish "evergreen" contracts for twenty (20) years with the selected

² See Independent Auditor's Report on Iowa Rural Health Telecommunication Program's Compliance with Rural Health Care Pilot Program Rules (USAC Audit No. RH 2013PP018) (Sept. 5, 2014) (Attachment 1).

³ Letter from Rural Health Care Division, Healthcare Connect Fund Program, to Arthur Spies, Iowa Rural Health Telecommunications Program (April 30, 2015) ("Denial Letter") (Attachment 2). The Denial Letter was received by Arthur Spies, IRHTP Project Manager, via email on May 1, 2015. See Email from Paige Pierce, Assistant Program Analyst, Rural Health Care Division, to Arthur Spies & Gabrielle Rodriguez (May 1, 2015) (attaching official denial letter for FY2013 FRN 13422321) (Attachment 3). Although the Denial Letter refers to "FRN 1342232," we believe this is a numerical typo, based on the cover email and IRHTP's records.

⁴ Email from Rural Health Care Division, USAC, to Arthur Spies (May 11, 2015) ("May 11, 2015 email") (Attachment 4).

⁵ See Affidavit of Arthur Spies, at 4 (Oct. 3, 2014), in IRHTP Response to USAC Audit Findings (Oct. 2014) (Attachment 5A); Iowa Rural Health Telecommunications Program, Sustainability Plan, at 2-3 (June 2009), in IRHTP Response to USAC Audit Findings (Oct. 2014) (Attachment 5B).

⁶ See *Rural Health Care Support Mechanism*, WC Docket 02-60, Order, 27 FCC Rcd 7907, 7911 (2012) ("2012 Bridge Order").

⁷ See Spies Aff. at 3.

⁸ Notice to Vendors, Request for Proposal, IRHTP RFP 12-005 (USAC RFP #04), at 3 (2012) ("Connectivity Services RFP") (Attachment 6).

⁹ See 2012 Bridge Order, 27 FCC Rcd at 7911, 1914.

vendor.¹⁰ The IRHTP awarded the “evergreen” contract to ICN after a competitive bidding process¹¹ and subsequently filed the funding request form for FRN 13422321. The IRHTP has since filed other requests for annual program year funding in connection with this contract. These other requests remain pending before the RHC Division but may also be at risk based on the RHC Division’s denial of FRN 13422321.

The RHC Division must reverse its determination for two principal reasons. First, the RHC Division has not made any findings that support its denial of FRN 13422321 on the basis of any apparent or possible competitive bidding violation. Second, to the extent that the RHC Division is relying on findings from the USAC Audit to support its determination as to FRN 13422321, several critical facts underlying the USAC Audit findings were reported incorrectly by USAC. IRHTP intends to timely appeal to USAC its determinations regarding the FRNs implicated by that audit.

A. IRHTP Has Not Committed Any Competitive Bidding Violations. Having Failed to Provide a Substantiated, Factually Accurate Finding of an Actual Competitive Bidding Violation, the RHC Division Must Reverse its Denial.

IRHTP has not committed any competitive bidding violations in connection with its participation in any Universal Service program. The RHC Division has made no findings that would support a different conclusion. Furthermore, the IRHTP has had no notice of which specific Commission rules or published policy are implicated in the RHC Division’s denial determination, thus depriving IRHTP of an opportunity to meaningfully address why the relevant law and facts do not support a denial of funding. Absent a substantiated, factually accurate finding of an actual violation of the Commission’s rules or policies, the RHC Division must reverse its denial of FRN 13422321.

The initial letter denying IRHTP’s Form 462 FRN 1342232[1] “for all services,”¹² is a one page document providing no rationale for USAC’s determination. The substantive part of the Denial Letter reads, in relevant part, as follows:

The Universal Service Administration Company (USAC) completed the review of the above-mentioned funding request and [h]as denied the request for all services. The explanation for the decision made about this request is as follows:

¹⁰ See Connectivity Services RFP, *supra* note 8, at 3.

¹¹ See Memorandum from Arthur Spies to IRHTP Steering Committee, “May 29, 2012 Conference Call Summary” (May 29, 2012) (“May 29, 2012 Conference Call Memorandum”) (Attachment 5B); Spies Aff. at 4.

¹² Denial Letter, *supra* note 3.

Explanation

Apparent service provider involvement in beneficiary's competitive bidding process. This issue was also raised under the recent RHCPP audit of IRHTP.

Supporting Portions from the Order

Section B 1. "Fair and Open" Competitive Bidding Process, paragraphs 229 thru 233.

Based on the text of the Denial Letter, it is difficult to know with any kind of certainty any specifics of the kind of service provider involvement the RHC Division objects to, or who the RHC Division believes has been "apparent[ly]" involved in the IRHTP's competitive bidding process in violation of the Commission's rules or policies.¹³ The very vague reference to "the recent [RHC Pilot Program] audit of IRHTP" fails to elucidate which specific actions or omissions resulted in the "[a]pparent service provider involvement" that has led the RHC Division to incorrectly deny funding for "all services" in connection with FRN 1342232[1].¹⁴

The general reference to the "Supporting Portions from the Order" is equally vague.¹⁵ One can reasonably assume that the "Section B 1. 'Fair and Open' Competitive Bidding Process, paragraphs 229 thru 233" reference relates to the *Healthcare Connect Fund Order*,¹⁶ but the order is not even clearly identified in the Denial Letter. Moreover, these paragraphs contain, essentially, the entirety of the *Healthcare Connect Fund Order*'s discussion of the competitive bidding process. Other than reiterating that whatever "involvement" USAC has described as "apparent" relates to the competitive bidding process and not to something else, the reference is completely unhelpful as to providing specific information to IRHTP of the problematic action or inaction.

The RHC Division's email notification from May 11, 2015 is even sparser.¹⁷ This communication simply states that the RHC Division has denied the IRHTP's FCC Form 462 "for the following reason: Possible Competitive Bidding Violation."¹⁸ There are no references to the Commission rules or policy the IRHTP has been found in "possible" violation of and there are again no findings of fact.

The IRHTP has made every effort to comply with the Commission's competitive bidding rules and policies from the outset, in many cases conferring with USAC staff to confirm that IRHTP processes were in accordance with USAC expectations. The RHC

¹³ See Denial Letter, *supra* note 3.

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ *Rural Health Care Support Mechanism*, WC Docket 02-60, Report and Order, 27 FCC Rcd 16678, 16778-79 (2012) ("*Healthcare Connect Fund Order*").

¹⁷ See May 11, 2015 Email, *supra* note 4.

¹⁸ *Id.*

Division has made no findings in connection with FRN 13422321 that would support a different conclusion, or allow IRHTP an opportunity to meaningfully respond to on appeal. Having failed to provide a substantiated finding of an actual violation of the Commission's rules or published policies, the RHC Division must reverse its denial of FRN 13422321, or at the very least, hold its determination in abeyance pending IRHTP's anticipated request for review of the determinations relating to FRNs 64723, 68296, 41446, and 63145 discussed in the USAC Audit.

B. To the Extent That the RHC Division Is Relying On Findings from the USAC Audit to Support its Denial of FRN 13422321, Several Facts That Are Said to Support its Findings are Incorrect. IRHTP Intends to Timely Appeal the Relevant Determinations.

As previously mentioned, the Denial Letter makes a vague reference to an "issue" which "was also raised under the recent RHCPP audit of IRHTP."¹⁹ It is unclear exactly which specific "issue" the RHC Division correspondence is referring to, but to the extent that the RHC Division is generally or specifically relying on findings addressed in the USAC Audit to support its determination as to FRN 13422321, several facts cited by USAC that are said to support the findings of the USAC Audit are inaccurate. The RHC Division therefore has likely relied on a number of mischaracterized and incorrect findings.

For example, Anthony Crandell, the sole proprietor of Access Integration Specialists ("AIS"), is erroneously characterized throughout the USAC Audit as a "consultant" to the ICN.²⁰ The USAC Glossary of Terms provides that a "consultant" is "[a] company or individual (non-employee of the entity) selected to perform certain activities related to the application process on behalf of the applicant or service provider for a fee. A Letter of Agency (LOA) or consultant agreement must be in place before the consultant undertakes these activities."²¹ In 2006, the ICN and AIS entered into a three-year contract under which AIS was contracted to perform project management services as needed and requested by ICN. Mr. Crandell, however, did not perform activities related to the application process on behalf of the [ICN].²² He did not, for example, draft or evaluate any of the bids tendered for the RFPs he developed or reviewed²³ in his capacity

¹⁹ Denial Letter, *supra* note 3.

²⁰ See, e.g., USAC Audit, *supra* note 2, at 7, 9, 19, 20-23, 25.

²¹ USAC, Rural Health Care Program, *Glossary of Terms*,

<http://www.usac.org/res/documents/rhc/pdf/handouts/RHC-Glossary-of-Terms.pdf> (last visited Jun. 29, 2015). He is also not an employee under the terms of the contract with ICN. See Affidavit of Anthony Crandell, at 1-3 (June 29, 2015) (Attachment 7).

²² See Crandell Aff. at 1-2.

²³ Mr. Crandell was involved with the following requests for proposals: RFP 08-001 (USAC RFP #00) ("Outside Plant Fiber RFP"); RFP 08-002 (USAC RFP #01) (Network and Site Electronics); RFP 10-001 (USAC RFP #03) (Broadband Lit services); RFP 12-004 (USAC RFP #05) (only with respect to Outside Plant Fiber and Network Electronics sections); and the Connectivity Services RFP. See Crandell Aff. at 2, 5.

as an independent contractor for ICN, or work on network design.²⁴ Mr. Crandell is therefore not a consultant as defined by USAC. It is also important to note that Mr. Crandell has never exercised any control or influence over ICN and his work for ICN did not influence the drafting or the evaluation of the RFPs for IRHTP with which he was involved.²⁵

The USAC Audit document also reflects another erroneous understanding, namely that Mr. Crandell was involved in the preparation of the IRHTP's Rural Health Care Pilot Program Application in 2007.²⁶ As Mr. Crandell can attest, Mr. Crandell did not assist in any way with IRHTP's Commission application for Rural Health Care Pilot Program funding in 2007.²⁷

Additionally, apparently misunderstanding the scope of a number of IRHTP RFPs, the USAC Audit infers from Mr. Crandell's participation in the Outside Plant Fiber RFP that he was privy to information that was not available to other bidders who participated in the later Quality Assurance Inspection Services RFPs, RFP 09-002 (USAC RFP #02) ("Quality Assurance Inspection Services RFP-1") and RFP 12-004 (USAC RFP #05) ("Quality Assurance Inspection Services RFP-2").

Contrary to the assumption made, the Outside Plant Fiber RFP and the subsequent RFPs were decidedly different as to scope and content. Specifically, the Outside Plant Fiber RFP was a fiber build-out with a quality assurance investigation component included.²⁸ This project required the presence of an individual at each build-out site to ensure safety and security protocols in addition to quality review to ensure that everything was built to industry standards,²⁹ but was not specific with regard to the hours needed or the type of work required.³⁰

The Quality Assurance Inspection Services RFP-1, on the other hand, took a different, far more narrow, approach. It simply identified the number of sites and hours of work in response to which the bidder would provide its "burdened" hourly rate,³¹ a much more "plug and play" approach to the work being bid. Later on, "a few hospitals that had previously declined to participate [in] the program sought to be included and participation agreements on the projects were completed....Despite the small number of hospitals

²⁴ See Crandell Aff. at 3, 5, 6.

²⁵ See Crandell Aff. at 6.

²⁶ See USAC Audit, *supra* note 2, at 6 ("The Beneficiary also explained that Tony Crandell (AIS) assisted with the request for proposal and bid evalu[a]tion for the network plan when the Beneficiary prepared its application for the RHCPP in 2007").

²⁷ See Crandell Aff. at 1-2.

²⁸ See Spies Aff. at 1.

²⁹ See Notice to Vendors, Request for Proposal, IRHTP RFP 08-001, at 3 (2008) (Attachment 8).

³⁰ See Crandell Aff. at 3-4.

³¹ See Crandell Aff. at 3-4, *citing* Notice to Vendors, Request for Proposal IRHTP RFP 09-002, at §§ 3.1, 3.8, 3.13 (describing the burdened hourly rate requirements), Annex A (providing a model form for all bidders to complete) (2009) (Attachment 9).

seeking to be added to the existing service, the additional service had to be competitively bid.”³² This became Quality Assurance Inspection Services RFP-2, which sought services to oversee the quality control of Outside Plant vendors installing fiber optic facilities or IRU services at this small number of locations,³³ using also the burdened rate approach.³⁴ The distinct nature of these Quality Assurance Inspection Services RFPs, combined with the fact that the Outside Plant Fiber RFP was available to everyone who bid on the Quality Assurance Inspection Services RFP-1³⁵ do not support the inferences apparently drawn by USAC and set forth in the USAC Audit about apparent and unproven access to “inside” information.

Because IRHTP intends to timely appeal the determinations as to the FRNs implicated by the USAC Audit, and it is not plain on which of these facts, if any, USAC relied on in deciding to deny FRN 13422321, IRHTP will not address the remaining underlying facts in this appeal. However, to the extent that the RHC Division is generally or specifically relying on the USAC Audit to support its determination as to FRN 13422321, several critical facts underlying the USAC audit were inaccurately reported and the RHC Division has therefore likely relied on a number of mischaracterized and incorrect findings of fact. Not having provided any other findings in support of its determination, the RHC Division must reverse its denial of FRN 13422321 or return it to pending status while the matter is reviewed. IRHTP respectfully suggests that the denial of its 2013 “evergreen” circuit fee funding request not be finalized until USAC has had the opportunity to review the material IRHTP anticipates presenting in connection with the USAC Audit.

C. Conclusion

For the foregoing reasons, the IRHTP hereby requests that USAC’s RHC Division reverse its previous determination as set forth in the Denial Letter and the May 11, 2015 Email and grant the IRHTP’s FRN 13422321. Alternatively, the RHC Division must hold its determination in abeyance pending IRHTP’s anticipated request for review of the determinations relating to FRNs 64723, 68296, 41446, and 63145 discussed in the USAC Audit.

³² Spies Aff. at 2.


³³ Memorandum from Arthur Spies to IRHTP Steering Committee, “June 20, 2012 Conference Call Summary” (June 21, 2012) (Attachment 5C).

³⁴ See Crandell Aff. at 3–4.

³⁵ See Crandell Aff. at 3–4, *citing* RFP 09-002, *supra* note 31, at 2.

Respectfully submitted,

**IOWA RURAL HEALTH
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Its Attorneys

Supporting Documentation:

Attachment	
1	USAC Audit No. RH 2013PP018 (Sept. 5, 2014)
2	Letter from Rural Health Care Division, Healthcare Connect Fund Program, to Arthur Spies, Iowa Rural Health Telecommunications Program (April 30, 2015)
3	Email from Paige Pierce, Assistant Program Analyst, Rural Health Care Division, to Arthur Spies and Gabrielle Rodriguez (May 1, 2015)
4	Email from Rural Health Care Division to Arthur Spies (May 11, 2015)
5	IRHTP Response to USAC Audit Findings (Oct. 2014) and Supporting Documentation, including: <ul style="list-style-type: none"> A. Spies Affidavit (Oct. 3, 2014) B. Memoranda and Emails regarding Connectivity Services, including: <ul style="list-style-type: none"> • Iowa Rural Health Telecommunications Program, Sustainability Plan (June 2009) • Memorandum from Arthur Spies to IRHTP Steering Committee, "May 29, 2012 Conference Call Summary," (May 29, 2012) C. Memoranda and Emails regarding Quality Assurance, including: <ul style="list-style-type: none"> • Memorandum from Arthur Spies to IRHTP Steering Committee, "June 20, 2012 Conference Call

	Summary" (June 21, 2012)
	D. Disclosure Memoranda
6	Notice to Vendors, Request for Proposal, IRHTP 12-005 (USAC RFP #04) (2012)
7	Crandell Affidavit (June 29, 2015)
8	Notice to Vendors, Request for Proposal, IRHTP 08-001 (2008)
9	Notice to Vendors, Request for Proposal, IRHTP 09-002 (2009)